

No 9/5/84-6 Lab/8798.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s. Super Steels, Plot No. 34, Sector-6, Faridabad.

BEFORE SHRI R.N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 64/1984

between

SHRI ABAD AHMED KHAN, WORKMAN AND THE MANAGEMENT OF M/S SUPER STEELS,
PLOT NO. 34, SECTOR-6, FARIDABAD

Present:—Shri M.K. Bhandari, for the workman.

Shri R.C. Sharma, for the management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Abad Ahmed Khan, Workman and the Management of M/s. Super Steels, Plot No. 34, Sector-6, Faridabad to this Tribunal for adjudication:—

Whether the termination of services of Shri Abad Ahmed Khan was justified and in order? If not, to what relief is he entitled?

2. Notices were issued to both the parties. In the claim statement, dated 13th September, 1984, it was alleged that the claimant was employed by the respondent on 20th February, 1980 as a helper and his last drawn wage was Rs. 402 per month. It was further alleged that the claimant was given a chargesheet, dated 5th April, 1983 and that the domestic enquiry was held in which the claimant demanded the facilities but the same were not given to him. It was further alleged that on 19th May, 1983, the claimant was again chargesheeted and that ultimately he was dismissed on 14th July, 1982, which order was illegal and as such the claimant was entitled to reinstatement with full back wages.

3. The Management in their written statement, dated 16th October, 1984 pleaded that the claimant was chargesheeted on 5th April, 1983 for sleeping on duty etc. when the enquiry was started against him and that the claimant committed another act of misconduct on 10th May, 1983 when he was again chargesheeted regarding that incident. It was further pleaded that the Enquiry Officer held joint enquiry regarding both the chargesheets in a fair and proper manner, in which the claimant participated throughout and that the order of dismissal was legal.

4. The claimant in his rejoinder, dated 5th November, 1984 reiterated the pleas taken in the claim statement.

5. On the pleadings of the parties, the following issues framed on 5th November, 1984:—

(1) Whether the enquiry is fair and proper as pleaded? OPM.

(2) Whether the termination of services of Shri Abad Ahmed Khan was justified and in order? If not, to what relief is he entitled? OPM.

6. It may be mentioned that the Management examined one witness and document. Ex. M-1 to M-22, have been tendered into evidence. The claimant examined two witnesses and documents, Ex. W-1 to W-6, were tendered into evidence. After going through the entire evidence and hearing the representatives of both the parties, my findings on the above issues are as under:—

Issue No 1:

7. The Management has examined MW-1, Shri Prem Chand Jain, who stated that he was appointed as Enquiry Officer,—vide letters Ex. M-1 and M-2 to hold the enquiry into the charges contained in the chargesheets, Ex. M-3 and M-4. He further stated that Ex. M-5 contained the enquiry proceedings and that Ex. M-6 to M-17 were the documents produced during the enquiry and that Ex. M-18 was the enquiry report. The documents, Ex. M-19 to M-22, were tendered into evidence by the Management.

8. The claimant Shri Abad Ahmed Khan (WW-1) stated that he was Assistant Cashier in the Union and that a demand was raised by the Union. He further stated that Shri Arun Singh, Foreman asked him to leave the job, but he did not do so. He then stated the chargesheet was served on him and

that he participated in the enquiry. The letters Ex. W-1 to W-6 were written by him to the Management. He further stated that the Enquiry Officer did not permit him to be represented through a representative and that his witnesses were not allowed to be examined. He further stated the statements of the witnesses were not recorded properly and that the copy of the finding of the enquiry was not given to him. WW-2 Shri Jagdish Rai stated that the allegations against the claimant were false who was charge-sheeted because he was an office bearer in the Union.

8. A perusal of the above evidence would show that the following charges were framed against the claimant as mentioned in the chargesheets Ex. M-3 and M-4 on 5th April, 1983 and 10th May, 1983 :—

- (1) In the chargesheet, dated 5th April, 1983, it was alleged on 1st April, 1983, the claimant was found sleeping during duty hours and had become habitual and did not care for the orders given by the superior officers.
- (2) In chargesheet, dated 10th May, 1983, it was alleged that the claimant was roaming during duty hours and left his place of duty without permission of the Supervisor and did not care for his duty.

The enquiry was held by Shri P.C. Jain. The enquiry proceedings Ex. M-5 show that the management examined Shri Nallu Singh, Ranjit Singh and Arun Parkash Singh. The documents were produced by Shri B.N. Singh, representative of the Management. The claimant was also examined by the Enquiry Officer. The Enquiry Officer in his report Ex. M-8 mentioned that charge No. 1 stood proved against the claimant regarding his sleeping during the duty hours on 1st April, 1983 for which purpose had relied on the testimony of Shri Ranjit Singh and Shri Arun Parkash Singh. The Enquiry Officer did not believe the version of the claimant and cogent reasons for the same.

9. It was argued by the representative of the workman that complaint regarding incident, dated 1st April, 1983 was filed by Shri Om Parkash Supervisor. The Enquiry Officer has held that Shri Ranjit Singh, Supervisor also worked with Shri Om Parkash, Supervisor. The testimony of Shri Ranjit Singh has been corroborated by Shri Arun Parkash Singh. Consequently on interference with this finding is called for.

10. As regards the second chargesheet, dated 10th May, 1983, the witnesses produced by the Management deposed that the claimant left the place of duty several times. The claimant gave his explanation that the Enquiry Officer had fixed domestic enquiry for 10th May, 1983 due to which he had to make enquiries but ultimately he was told that the Enquiry Officer was not coming and that the enquiry was adjourned. Ex. M-4 is the letter, dated 2nd May, 1983 issued by the Management that the enquiry was fixed for 10th May, 1983. Ex. M-8 is the letter issued by the Enquiry Officer to the effect that the enquiry was adjourned from 10th May, 1983 to 19th May, 1983. This order was got noted from the claimant on 10th May, 1983. This document shows that the date of enquiry was fixed for 10th May, 1983, but ultimately it was adjourned to 19th May, 1983. The claimant had, therefore to make enquiries on 10th May, 1983. As such his absence from duty for some time on 10th May, 1983 stood explained by the letters Ex. M-4 and M-8 produced by the Management. Consequently, the finding given by the Enquiry Officer on the second charge, dated 10th May, 1983 cannot be upheld because the defence version of the claimant was not properly appreciated.

11. It was argued by the representative of the workman that no opportunity was given to the claimant to produce the defence evidence. Argument is without any force because the claimant closed his evidence on 13th June, 1983 and did not make any prayer to produce any further evidence.

12. It was then argued that the claimant was not allowed to bring his representative. The argument does not carry any weight because on 11th June, 1983 the claimant stated before the Enquiry Officer that he would defend his case himself, as mentioned in the proceedings Ex. M-5. It was further argued that the Enquiry Officer was not an independent person. Shri P.C. Jain stated that he was Personnel Manager in the respondent factory and that the enquiry was held by him. He had no personal enmity against the claimant and as such the enquiry cannot be held to be vitiated on this ground.

13. In view of the above discussion, it is held that the enquiry is fair and proper regarding charge No. 1 only. The issue is decided in favour of the Management.

Issue No. 2 :

14. It was argued by the representative of the claimant that the punishment awarded to the claimant was disproportionate to the misconduct attributed to him, while the argument of the representative of the Management was that the claimant deserved to be dismissed. Arguments of representatives of both the parties have been heard. In my view, the order of dismissal in the circumstances of the present is disproportionate to the misconduct attributed to the claimant. The impugned order of dismissal is

thus set aside. The ends of justice would be met if the claimant is deprived of his full back wages for his misconduct, but should be reinstated. The award is passed accordingly.

Dated the 1st October, 1985.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 770, dated the 1st October, 1985.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour, and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

No. 9/5/84-Lab/8799.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s. Sheel Packaging Industries, Plot No. 31, Sector 25, Faridabad.

BEFORE SHRI R.N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 79/1984

between

SHRI BINDESHWARI SHUKLA, WORKMAN AND THE MANAGEMENT OF M/S. SHEEL
PACKAGING INDUSTRIES, PLOT NO. 31, SECTOR 25, FARIDABAD

Present:—

Shri L.N. Yadav, for the workman.

Shri C.R. Bhalla, for the management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Bindeshwari Shukla, Workman and the Management of M/s. Sheel Packaging Industries, Plot No. 31, Sector-25, Faridabad to this Tribunal for adjudication:—

Whether the termination of services of Shri Bindeshwari Shukla was justified and in order? If not, to what relief is he entitled?

2. Notices were issued to both the parties. The claimant in his claim statement, dated 16th August, 1984 alleged that he joined service of the respondent-management on 1st June, 1976, but letter of appointment was issued to him on 16th November, 1976 as Pesting Machineman and that his last drawn wages were Rs 310 per month. It was further alleged that the claimant was a Trade Union Activist, due to which the Management stopped his entry into the factory at the gate on 18th July, 1983. It was then alleged that a false chargesheet was given to him on 18th July, 1983 which was amended on 29th July, 1983. It was further alleged that the enquiry was held against the principles of natural justice and that the order of dismissal, dated 25th November, 1983 passed by the Management was illegal and as such the claimant was entitled to reinstatement with full back wages.

3. The respondent management in their written statement, dated 17th September 1984 pleaded that the claimant had no *locus standi* to file the present claim-statement and that he was appointed on 16th November 1976 as helper. It was further pleaded that the claimant was charge-sheeted and that the domestic enquiry was held according to the rules and further that the order of dismissal was also passed in accordance with law.

4. The claimant in his rejoinder, dated 17th October, 1984, reiterated the pleas taken in the claim statement.

5. On the pleadings of the parties, the following issues were framed.—

(1) Whether the claimant has no *locus standi* to file the claim statement? OPM.

(2) Whether the enquiry is fair and proper ? OPM

(3) Whether the termination of services of Shri Bindeshwari Shukla was justified and in order? If not to what relief is he entitled ? OPM

6. It may be mentioned that the Management has examined two witnesses and documents, Ex. M-1 to M-22 have been tendered into evidence. The claimant appeared in the witness box and tendered into evidence the documents, Ex. W-1 to W-6. After going through the entire evidence and hearing the representatives of both the parties, my findings on the above issues are as under:—

Issue No. 1:

7. The Haryana Government had made the present reference on the demand notice given by the claimant C/o AITUC Office. The claim statement was also signed by the claimant. The dispute was thus raised by the claimant and as such, he has *locus standi* to file the claim statement. The issue is decided accordingly against the Management and in favour of the claimant.

Issue No. 2 :

8. The Management has examined MW-1 Shri, R.P. Singh who stated that he was appointed as Enquiry Officer,—*vide* letter Ex. M-1 and that he sent notices Ex. M-2 and M-M 3. He further stated that the claimant handed over the letter Ex. M-4 which he demanded certain facilities and that all the facilities were given to the claimant. He then stated that the claimant suggested the name of Shri Achhe Lal a co-worker as his representative, but on the same date, he suggested the name of Shri Gian Chand and that the request of the claimant was allowed. He further stated that the claimant admitted charge No. 3 and that copies of day-to-day proceedings were given to the claimant. Ex. M-5 is the copy of the chargesheet while Ex. M-6 is the copy of the explanation and Ex. M-7 contained the enquiry proceedings. The Enquiry Officer further stated on 3rd October, 1983, the claimant changed his representative and Shri Narain Parshad was appointed his representative as requested by the claimant. He further stated that the documents Ex. M-8 to M-19 were filed during the enquiry proceedings, and the Ex. M-20 was the Enquiry report submitted by him when the claimant was held guilty. MW-2 Shri Chander Mohan stated that on receipt of the enquiry report Ex. M-20, the claimant was dismissed,—*vide* order Ex. M-22.

9. Shri Bindeshwari Shukla claimant has appeared as WW-1 and stated that he was appointed by the respondent in 1976 and that Ex. W-2 was the copy of the appointment letter and further that he was confirmed,—*vide* letter Ex. W-3. He then stated that letters Ex. W-4 and W-5, were issued by the Management granting him increments and that chargesheet was given to him in conciliation office when he gave demand notice, dated 18th July, 1983 Ex. W-6. He further stated that suspension allowance was not given to him during the enquiry proceedings and that copy of Model Standing Orders was also not given to him. He then stated that his request to change the place of enquiry was not acceded to and that no second show cause notice was given to him by the Management. He further stated that the copy of the complaint was not supplied to him.

10. A perusal of the above evidence would show that the following three charges were framed against the claimant as mentioned in the chargesheet Ex. M-5:—

- (1) that on 6th February, 1979, the claimant did not cut kraft paper to the required size whereby the Management was put to a loss of Rs. 2,000 and the claimant had admitted mistake and apologised, but he did not change his attitude.
- (2) that on 21st May, 1983, 23rd May, 1983 and 27th May, 1983, wooden phattis were put in the gears of the Printing Machine in order to damage the same and it was brought to the knowledge of the management on 17th July, 1983 that the claimant was responsible for this sabotage.
- (3) that due to non-availability of power Management was compelled to change weekly off days to Wednesdays instead of Sundays, but the claimant instigated the workers against the Management and that on 19th July, 1983, during the lunch hour, the claimant instigated the workers not to cooperate with the Management and he threatened them of dire consequences if any worker gave evidence against him.

The enquiry proceedings Ex. M-7 go to show that the Management examined Shri Harnam Singh and Shri Vijay Kumar Sharma. The claimant appeared himself and examined Shri Gian Chand, Shri Ram Nath and Shri Ram Agiya in the enquiry. The enquiry Officer considered the entire evidence led by both the parties and gave his findings in the enquiry report Ex. M-22. The Enquiry Officer found that the charge No. 1 relating to the year 1979 was admitted by the claimant and he had tendered apology for the same as deposed to by Shri Harnam Singh and Shri Vijay Kumar Sharma. Regarding charge No. 3, the Enquiry Officer found that this charge was admitted by the claimant on 12th November, 1983 in the proceeding, dated 12th November, 1983. It was mentioned by the Enquiry Officer that no evidence was to be led on charges Nos. 1 and 3 because these

Charges had been admitted by the claimant. These proceedings were signed by claimant and his representative Shri Narain Parsad as well. Regarding charge No. 2 Shri Harnam Singh and Shri Vijay Kumar's testimony was considered by the Enquiry Officer and since both these witnesses were not present when the alleged offence was committed. The Enquiry Officer observed that this charge stood proved through necessary inferences. There is no direct evidence on this charge and the charge was also vague because the name of the person, who gave information to the Management was not given in the chargesheet. Consequently, on the basis of the inferences, the finding of the Enquiry Officer regarding Charge No. 3 cannot be upheld.

11. It was argued on behalf of the claimant that list of witnesses was not given to him. The argument is without any force because the list of witnesses was given to him on 13th October, 1983 as mentioned in the enquiry proceedings Ex. M-7.

12. It was then argued that the claimant was not represented in the enquiry. The argument fails because the claimant appointed Shri Achhe Lal and then Shri Gian Chand and later on Shri Narain Parshad was appointed as his representative on his request, who participated in the enquiry.

13. It was then argued on behalf of the claimant that copy of the Model Standing Orders was not given to him. The argument is without any force because the copy of the said document was given to him in English language as mentioned in the proceedings, dated 3rd October, 1983, copy Ex-7.

14. It was then argued on behalf of the claimant that the suspension allowance was not given to him. The claimant while appearing as W-1 admitted in cross-examination that he had demanded full wages for the suspension period and took up his case before the Labour Court, where the suspension allowance was given to him. Consequently, the claimant was demanding full wages for the suspension period and not the suspension allowance. In the ruling reported as **Ghansyam Dass Shrivastava V. State of Madhya Pradesh**, 1973 Lab I.C. 778 it is laid down that where the delinquent had specifically communicated his inability to attend the enquiry due to paucity of funds resulting from non-payment of subsistence allowance, the enquiry was vitiated for his non-participation. This ruling is distinguishable on facts because in the present case, the claimant participated in the enquiry throughout and himself refused to take the suspension allowance, but claimed full wages for that period and took up the dispute to the Labour Court.

5. It was then argued that no second show cause notice was given to the claimant. In the ruling reported as **Abdul Rehman V. E.I.D. Parry Ltd. Tadepalli and another**, 1977 Lab. I.C. (NOC) 194 (Andh. Pradesh), it is laid down that neither the ordinary law of the land, nor the Industrial law required second show cause notice being given to the employee before an order of discharge is passed against him.

16. It was then argued that the claimant was not given full opportunity to led defence evidence. Reliance was placed on the ruling reported as **Parmananda Mishra V. The Comptroller and Auditor-General of India, New Delhi**, 1975 Lab. I.C. 838 in which it is laid down that whereas the material witness was not examined inspite of the application of the claimant, the enquiry was vitiated. The ruling is distinguishable on facts because in the present case, the claimant appeared in the witness-box in the enquiry and then closed his evidence on 15th November, 1983.

17. The representative of the claimant placed reliance on the ruling reported as **M/s. Bharat Iron Works V. Shagubhai Patel and others**, 1976-Lab.I.C.4 in which it was alleged that the workman was victimised. This ruling is distinguishable on facts because in the present case, the chargesheet was framed against the claimant and the enquiry was held against him regarding the charges mentioned above. Reliance was also placed on the ruling reported as **K.C.P. Employees' Association Madras V. The Management of M/s K.C.P. Ltd., and others, etc.** 1978--Lab I.C. 518, in which it is laid down that benefit of reasonable doubt on law and facts, if there be such doubt, must go to the weaker section, Labour. It is for this reason that the benefit of doubt regarding charge No. 2 has been given to the claimant.

18. It may be mentioned that the representative of the Management placed reliance on the ruling reported as **The Associated Cement Co. Ltd. V. Abdul Gaffar and another**, 1980 Lab. I.C. 683, in which it is laid down that where the guilt has been admitted by the workmen there was no necessity to tender evidence. For this reason, the findings of the Enquiry Officer on charge Nos. 1 and 3 have been upheld on the basis of the admission. In the ruling reported as **The Indian Iron and Steel Co. Ltd. V. The Ninth Industrial Tribunal and Other** 1977-Lab IC 687, it is laid down that Model Standing Orders will apply if there are no certified standing orders. In the present case, the Model Standing Orders are applicable as no Certified Standing Orders have been framed regarding the respondent factory. In the ruling reported as **Employers of Firestone Tyre and Rubber Co. (Pvt). Ltd. V. The workmen respondent**, AIR-1968 Supreme Court 236, it is laid down that the domestic enquiry cannot be equated to enquiries under article 311 of the Constitution. It is well settled that principles of natural justice must be followed in a domestic enquiry.

19. In view of the above discussion it is held that the enquiry is fair and proper regarding charges Nos. 1 and 3 only. The issue is decided accordingly in favour of the Management.

Issue No. 3.

20. As regards charge No. 1, it has come into evidence, during the domestic enquiry that the claimant had admitted his mistake and tendered his apology. Consequently, the apology was accepted in 1979. As such no punishment can be awarded on the basis of the charge levelled on 29th July, 1983 when the apology had already been accepted by the Management. Regarding charge No. 3 it was argued on behalf of the claimant that punishment awarded to the claimant was not only disproportionate but also harsh. Reliance was placed on the ruling reported as **The Workmen of M/s. Firestone Tyre and Rubber Co. of India Pvt Ltd., V. The Management and Others**, 1973 -Lab I.C. 851, in which it is laid down that section 11-A of the Industrial Disputes Act, 1947 empowers the Industrial Tribunal to interfere with the punishment and alter the same. It was argued on behalf of the management that the punishment awarded to the claimant was proportionate to the charges proved against him. After hearing the argument of both the parties, I am of the view that the punishment of dismissal is disproportionate to the misconduct attributed to the claimant on charge No. 3. Consequently, the impugned order of dismissal is set aside. The end of justice would be met if the claimant is deprived of full back wages for his misconduct but should be reinstated. The award is passed accordingly.

Dated : 1st October, 1985

R.N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst No. 771 Dated 1st October, 1985

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required under Section-15 of the Industrial Disputes Act, 1947.

R.N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9/5/84-6 Lab/8800.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s. Jai Hind Investment of Industries Private Ltd., Sector 24, Faridabad:—

BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 161/1981

between

SHRI K. L. MATTA, WORKMAN AND THE MANAGEMENT OF M/S. JAI HIND INVESTMENT
OF INDUSTRIES (PRIVATE) LTD., SECTOR-24, FARIDABAD.

Present—

Shri K. L. Matta, workman in person.

Shri Jagbir Singh Badhana, for the management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 the Governor of Haryana referred the following dispute between Shri K. L. Matta, Workman and the Management of M/s. Jai Hind Investment of Industries (Private) Ltd., Sector-24, Faridabad to this Tribunal, for adjudication:—

Whether the termination of services of Shri K. L. Matta was justified and in order? If so, to what relief is he entitled?

2. Notices were issued to both the parties. The claimant in his claim statement dated the 9th July, 1981 alleged that he was appointed as Stenographer by the respondent on 23rd May, 1974, but was dismissed on 28th January, 1977. It was further alleged that he was reinstated by the Industrial Tribunal, but the Management challenged the award and ultimately the Hon'ble Supreme Court ordered reinstatement of the claimant with Rs. 12,000 as back wages. It was further alleged that in order to avenge the defeat, the Management was bent upon to get rid of the claimant. It was then alleged that the claimant reported for duty in the Faridabad factory Office on 10th May, 1980, but he was not provided with any job and was made to sit in the reception department with a view to humiliate him and to cause mental torture to him. It was alleged that the Management with *malafide* intention, transferred the claimant from Faridabad factory Office to their Office at Delhi on 28th May, 1980, when the claimant protested against the said order and that on 2nd June, 1980, the claimant was not allowed to enter the gate of the factory. It was also alleged that the conduct of the management after his reinstatement was to victimise, harass and torture the claimant. It was then alleged that on 16th August, 1980, a chargesheet was served on the claimant and ultimately he was dismissed on 19th December, 1980. It was alleged that the dismissal of the claimant was *malafide* and illegal and as such he was entitled to reinstatement with full back wages.

The Management in their written statement dated 29th July, 1981 pleaded that as per conditions of the appointment letter and standing orders, the claimant could be transferred to a place where the respondent management had any branch or office. It was further pleaded that the services of the claimant were terminated in January, 1977, but he was reinstated by the award of the Industrial Tribunal, when the Management took the matter to the Hon'ble Supreme Court and the claimant was reinstated and was also awarded Rs. 12,000 as wages for the intervening period. It was further pleaded that on 12th May, 1980, the Management implemented the award and that on 28th May, 1980 the claimant was ordered to report for duty at Delhi Office, but he came to the factory on 29th May, 1980 and behaved indifferently and refused to attend duty at Delhi Head Office, when the Management wrote many letters to him till August, 1980, and ultimately issued a chargesheet on 16th August, 1980 and after considering his explanation, a domestic enquiry was ordered, which was held by Shri S.P. Gaur. It was further pleaded that the claimant fully participated in the enquiry proceedings and that on receipt of report of the Enquiry Officer, the Management dismissed the claimant.

4. The claimant in his rejoinder dated the 3rd September, 1981 reiterated the plea taken in the claim petition.

5. On the pleadings of the parties, the following issues were framed on 3rd September, 1981 and 9th June, 1982:—

(1) Whether the enquiry is fair and proper ? OPM

(2) Whether the termination of services of Shri K.L. Matta was justified in order? If not, to what relief is he entitled ? OPM

6. It may be mentioned that *ex parte* proceedings were ordered against the claimant, which led to the passing of the *ex parte* award on 3rd November, 1982, but on the application filed by the claimant, the *ex parte* award was set aside on 27th April, 1985. On merits, the Management had examined two witnesses and documents Exhibit M-1 to M-9 have been tendered into evidence. The claimant appeared in the witness box and examined one witness. After going through the entire evidence and hearing the claimant and the representative of the management, my findings on the above issues are as under :—

Issue No. 1 :

The Management has examined MW-1 Shri S. P. Gaur who was appointed as Enquiry Officer,—*vide* letter Exhibit M-1 who stated that the enquiry was held by him. He further stated that the document Exhibit M-2 contained the enquiry proceedings. He further deposed that all the facilities demanded by the claimant were given to him and that the enquiry was held by him in accordance with the principles of natural justice and that full opportunity was given to the claimant to cross-examine the Management's witnesses and produce his defence evidence. He then stated that Exhibit M-3 was his enquiry report and that the findings were based on the oral as well as documentary evidence led before him. He further stated that the list that only contained the documents which were produced during the enquiry. MW-2 Shri Prem Parkash, Secretary of the respondent Company, stated that the claimant was appointed,—*vide* appointment letter Exhibit M-5. He further stated that Exhibit M-6 was the charge-sheet, while Exhibit M-7 was the copy of the reply filed by the claimant to the chargesheet. He then stated that Exhibit M-3 was the copy of the Certified Standing Orders of the Respondent Company and that on receipt of the report of the Enquiry Officer Exhibit M-3, the claimant was dismissed,—*vide* order copy Exhibit M-9 because he was found guilty by the Enquiry Officer. He further stated that he recognised the signatures of Shri S. M. Aggarwal, Commercial Manager on the letter of dismissal Exhibit M-9 and that the previous record of the claimant was also considered before passing the said order.

8. Shri K. L. Matta claimant (WW-1) stated that he was appointed as Stenographer on 23rd May, 1974 in the respondent factory, but was dismissed on 28th January, 1977 without holding any enquiry and was reinstated by the orders of the Hon'ble Supreme Court on 2nd May, 1980 and joined service on 10th May, 1980. He further stated that on 28th May, 1980, he was stopped at the gate of the factory and that the enquiry was

held by the management and was dismissed on 19th December, 1980. He further stated that he was not allowed to bring any co-workman as his representative in the enquiry which was not held in accordance with the principles of the natural justice. He also stated that the Enquiry Officer was a factory employee and was thus interested in the Management and as such the Enquiry was not fair and proper and that he be reinstated with full back wages. WW-2 Shri Ram Kishan stated that he was working in the respondent factory since 1st June, 1976 as Electrician and was the representative of the claimant in the domestic enquiry held by Shri S. P. Gaur, MW-1. He further stated that no facilities were given to the claimant by the Enquiry Officer and that the statements of the witnesses were not properly recorded by the Enquiry Officer and that the Enquiry Officer was not impartial.

9. Exhibit M-6 is the chargesheet dated the 16th August, 1980 to the effect that the claimant was transferred to New Delhi Office on 28th May, 1980 but he did not comply with that order and did not report himself for duty at New Delhi Office. It was also alleged that in his letter dated the 1st June, 1980, written to the Commercial Manager, the claimant had used insulting and defamatory language. In reply to the letter of the Management dated the 30th May, 1980 in which it was alleged that on 30th May, 1980 the claimant used impolite language to company staff members. The enquiry proceedings Exhibit M-2 show that the Management examined Shri Hari Mohan Vijay, Assistant Personnel Officer, and Shri Mahabir Parshad. Shri K. L. Matta claimant appeared in the witness-box. Exhibit M-3 is the Enquiry Report. The Enquiry Officer held that the charge regarding use of impolite language as mentioned in the letter dated the 30th May, 1980 was not proved. He, however, held that the claimant had not complied with the orders transferring him from Faridabad to Delhi Office and had used rustic language in the letter addressed to the Commercial Manager on 1st June, 1980. The Enquiry Officer has based his findings on the evidence led by the management and after considering the evidence led by the claimant in his defence. As already mentioned above, out of three charges, one charge was not proved in the enquiry. The claimant was represented by Shri Ram Kishan Sharma in the enquiry proceedings and the witnesses produced by the Management were cross-examined by him and his representative and copies of the enquiry proceedings were also given to the claimants. The claimant himself appeared in the witness-box and was cross-examined by the Management and he stated that he had not to produce any other evidence. The claimant admits that he did not comply with the transfer order. The enquiry Officer has found that on the basis of the clause 18(1) of the Certified Standing Orders of the Respondent Company, the claimant could be transferred to any out side station of the respondent company. He has also found that rustic language was used by the claimant in his letter dated the 1st June, 1980. Since the findings are based on evidence, therefore, no interference with the same is called for.

10. It was argued that Shri S.P.Gaur, Enquiry Officer was not an independent person. MW-1 Shri S.P.Gaur stated that when he was appointed as Enquiry Officer he was working in M/s Dabriwala Steels. Consequently, the argument does not carry any weight because the Enquiry Officer was an independent person and he held that one charge against the claimant was not proved.

11. It was argued that full opportunity was not given to the claimant in the enquiry proceedings. The argument is without any force because the claimant cross examined the witnesses produced by the Management and the material documents were also produced by the Management. The claimant examined himself in defence and did not produce any other witness in defence. He was represented by Shri Ram Kishan Sharma during the Enquiry. The principles of natural justice were, therefore, complied with.

12. In the ruling reported as *M/s Tannery & Footwear Corporation of India Ltd. V. State of U.P. and others*, 1979 Lab. I.C., 1434, it is laid down that failure to supply the copy of the enquiry report along with show-cause notice did not amount to violation of principles of natural justice. In the ruling reported as *J. D. Jain V. Management of State Bank of India and another* 1982 Supreme Court Cases (L and S) 68, it is laid down that strict rules of evidence were not applicable in the domestic enquiry. In the ruling reported as *Awadesh Kumar Bhatnagar V. The Gwalior Rayon Silk Manufacturing Weaving Ltd. and another* 1973 Supreme Court Cases (L & S) 251, it is laid down that non-production of certain slips by the Company do not vitiate the enquiry. In the ruling reported as *The East India Hotels V. Their Workmen and others*, 1974 Lab I.G. 532, it is laid down that the Tribunal cannot reappraise the evidence and arrive at a conclusion different from that arrived at by the Domestic Tribunal.

13. In view of the above discussion, it is held that the enquiry was fair and proper. The issue is decided accordingly in favour of the Management.

Issue No. 2 :

14. As already mentioned above, the charge regarding use of impolite language on the basis of the letter dated 30th May, 1980 was not proved in the enquiry. The letter dated the 1st June, 1980 was sent by the claimant in reply to the letter dated the 30th May, 1980, referred to above, and the reply given by the claimant was to the following effect :—

“In this connection, I have to simply state that the allegations levelled against him, namely, using impolite language to company staff members (to whom without any name) are more fantastic than the fantasy

of the Alladin in the Wonder land". The use of impolite language in the letter dated 30th May, 1980 was not proved, as mentioned above. Consequently, the rustic language used in the letter dated the 1st June, 1980 does not carry much significance when the allegations in the letter dated the 30th May, 1980 are not proved. Moreover in the letter dated the 1st June, 1980, the claimant had alleged that the allegations levelled in the letter dated the 30th May, 1980 were more fantastic than the fantasy of the Alladin in the Wonderland. This rustic language did not justify the dismissal of the claimant. Further, the claimant did not comply with the transfer order, but his plea is that after his reinstatement by the Hon'ble Supreme Court, he went to the factory on 10th May, 1980 but he was not provided with any job and was made to sit on the reception department with a view to humiliate and to cause mental torture to him and that he was transferred to Delhi Office with a *malafide* intention on 28th May, 1980 and that all this was done by the Management in order to avenge the defeat. The Management expected that the claimant should have complied with the order of transfer, but at the same time it should not have passed the transfer order in a hasty manner, thus giving a wrong impression to the claimant that it could teach a lesson to the claimant, merely because he ultimately succeeded in his case in the Hon'ble Supreme Court. The Management no doubt had the authority to transfer the claimant. In the circumstances of the present case, its hasty action has created a wrong impression in the mind of the claimant who has been struggling for his survival since 28th January, 1977 then he was dismissed in the first instance and reinstated by the Hon'ble Supreme Court in May 1980, and had again to face the dismissal with effect from 19th January, 1980. Consequently, the impugned order of dismissal is not proportionate to the misconduct attributed to the claimant and, as such, the impugned order of dismissal is set aside. The ends of justice would however, be met if the claimant is deprived of his full back wages, for the misconduct but he should be reinstated. The award is passed accordingly.

Dated the 1st October, 1985

R. N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 772, dated the 1st October, 1985.

Forwarded (four copies), to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9/5/84-6 Lab./8801.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the Workman and the management of M/s Precision Auto Industries, Plot No. 375, Sector 24, Faridabad.

BEFORE SHRI R.N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 326 of 1982

Between

SHRI SHREE KISHAN SHARMA, WORKMAN AND THE MANAGEMENT OF M/S PRECISION
AUTO INDUSTRIES PLOT NO. 375, SECTOR-24, FARIDABAD.

Present—

Shri L.N. Yadav for the workman.
Shri R.C. Sharma, for the Management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section-10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Shree Kishan Sharma, Workman and the Management of M/s Precision Auto Industries Plot No. 375, Sector-24, Faridabad, to this Tribunal for adjudication :—

"Whether the termination of services of Shri Shree Kishan Sharma, was justified and in order ? If not, to what relief is he entitled ?

2. Notices were issued to both the parties. The claimant in his claim statement dated 1st October, 1982, alleged that the claimant had been working in the respondent factory since 27th July, 1976 as Turner and that his last drawn wages was Rs. 450 per month. It was further alleged that no letter of appointment was issued to the claimant and that the Management did not issue wage slip, identity card, attendance card etc., and also obtained signatures on blank papers etc. It was then alleged that the claimant fell ill due to which he did not go to the factory for two days and that he went to the gate of the factory on 20th February, 1982, but the Management stopped his entry and asked him to collect his dues on 8th March, 1982. It was further alleged that on 8th March, 1982, the Management obtained his signatures on blank voucher and papers under threat and did not pay any amount to him. It was then alleged that no chargesheet was given to the claimant and as such termination of service was illegal and unjustified and as such the claimant was entitled to reinstatement with full back wages.

3. The Management in its written statement dated 13th October, 1982 and 31st January, 1983 pleaded that on the alleged date of termination, the claimant was in employment of the respondent. It was further pleaded that the claimant remained in the employment of the respondent upto 30th October, 1980 and thereafter the Management had nothing to do with the claimant. It was further pleaded that the Management had knowledge that the claimant was working in their concern which was situate in the same premises and working under the name and style of Durga & Co., which was an independent concern and that the claimant could raise the dispute against M/s Durga & Co.

4. The claimant in his rejoinder dated 8th November, 1982/16th February, 1983 reiterated the pleas taken in the claim statement and denied that he ever worked in M/S Durga and Company.

5. On the pleadings of the parties, the following issues were framed on 8th March, 1983 :—

- (1) Whether the workman was not in the employment on the date of alleged termination ? OPM
- (2) Whether the termination of service of Shri Shree Kishan Sharma was justified and in order ? If not, to what relief is he entitled ? OPM

6. It may be mentioned that the Management has examined two witnesses and documents, Ex. M-1 to M-18, have been tendered into evidence. The claimant has examined two witnesses and documents, Ex. W-1 to W-3, have been tendered into evidence. After going through the entire evidence and hearing the representatives of both the parties, my findings on the above issues are as under :—

7. Issue No. 1.—The Management has examined MW.1 Bijender Pal who stated that he was an Office Bearer in INTUC Union and had seen the document Ex. M-1. He further stated that the claimant received the amount on the basis of the voucher Ex. M-1 in his presence and affixed his signatures thereon, which was attested by the witness. He further stated that Ex. M-16 was scribed by Shri Bhim Singh Yadav who was General Secretary of the Union, and that the said document was signed by the claimant. He further stated that Ex. M-15 was the appointment letter and that endorsement at point 'A' thereon was in his hand and bore his signatures. MW-2 Shri S.C. Aggarwal, Proprietor of the respondent company, stated that he had brought the record according to which the claimant joined service in September, 1977 and remained there till October, 1980 and that his name did not appear in their register thereafter. He further stated that M/s Durga & Company was doing the job of the respondent company as Contractor and had displayed their Board and the record of M/s Durga and Company was separate from the respondent factory. He then stated that the claimant joined service of M/s Durga & Co. since 1st November, 1980, which company was responsible to deposit Provident Fund of the claimant as well as E.S.I. contribution. He further stated that the claimant filed a complaint against him copy Ex. M-17 and that in the office of the Labour Officer, the Management took the plea that the claimant was not their employee. He further stated that M/s Durga & Co. had been closed since February, 1984. He further stated that Ex. M-18 was the true copy of the payment of wages register and that Ex. M-2 to M-14 were the photo stat copies of the entries from that register while document Ex. M-18 was signed by the Labour Inspector, when he checked the register and that these documents were signed by Shri Radha Kishan contractor.

8. Shri Shree Kishan Sharma claimant (WW-1) stated that he was employed in the respondent factory on 27th July, 1976 as Turner and was drawing Rs. 450 per month as wages on 19th February, 1982. He further stated that no notice pay or compensation was given to him and was not paid wages for the period he worked in February, 1982. He stated that Shri Sajan Singh's services were also terminated at that time. He further stated that E.S.I. Card Ex. W-1 and Identification certificate Ex. W-2 were issued to him and that he did not work in any other factory. He also stated that Ex. W-3 was the photo stat copy of the certificate issued by the Management. He stated that his signatures on appointment letter were obtained by the Management and they got his signatures affixed on 4/5 blank documents. WW-2 Shri Om Parkash stated that he joined service of the respondent in September, 1981, and that the claimant used to work in that factory at that time. He further stated that he worked in that factory upto 1982. WW-3 Shri Virender Singh, Clerk Office of the Labour Officer, Sector-15, Faridabad, stated that he had brought the summoned record and that Shri S.C. Aggarwal (MW-2) appeared as witness before the Payment of Wages Authority on 29th August, 1984, when he stated that only the names in the payment of Wages Register of M/s Durga & Co. were written in his hand and that his signatures appeared at serial No. 6 in the register relating to September, 1981 of M/s Durga & Company Ex. M-1.

9. *Firstly*, a perusal of the above evidence would show that Shri Shree Kishan claimant has deposed as WW-1 that he joined the services of the respondent on 27th July, 1976, but he was not allowed to join duty on 20th February, 1982 and that no compensation etc. was paid to him. His version is corroborated by Shri Om Parkash WW-2, who stated that in the year 1981, the claimant was working with the respondent because the witness was also in service in the respondent factory at that time. The testimony of Shri S.C. Aggarwal MW-2 is, however, to the effect that the claimant remained in their employment upto 31st October, 1980 and thereafter he joined the services of M/s Durga & Company, which was being run by Shri Radha Krishan Contractor and that M/s Durga & Company was separate from the respondent factory. The Voucher Ex. M-1 has been produced by the Management in which it is recited that the sum of Rs. 759.00 was paid to the claimant on 31st October, 1980. The claimant has deposed that his signatures were obtained on blank documents and that no amount was paid to him. The signatures have not been affixed on the revenue stamp. If the amount has been paid to the claimant on 31st October, 1980, the signatures would have been obtained on the revenue stamp. Consequently, the document Ex. M-1 does not help the Management.

10. *Secondly*, Ex. W-3 is the certificate dated 20th August, 1981, in which it is recited that the claimant alongwith other persons was working in the respondent factory in the night shift. This letter demolishes the case of the respondent that the claimant was working with M/s Durga and Company after 31st October, 1980. On the other hand, this letter shows that the claimant was working with the respondent on 20th August, 1981 as well.

11. *Thirdly*, the claimant has produced the E.S.I. Card Ex. W-1 which does not show that the claimant was serving M/s Durga and Company.

12. *Fourthly*, the identification certificate Ex. W-2 shows that the claimant was in service of the respondent company.

13. *Fifthly*, if the claimant had not been in service of the respondent, they would not have stood guarantors for him to purchase Cycle because MW-2 Shri S.C. Aggarwal, admitted in cross examination that they stood guarantors, when the claimant was given cycle.

14. *Sixthly*, Shri S.C. Aggarwal, MW-2, stated in cross examination that he never maintained the record of M/s Durga and Company (Ex. W-4 to W-14). The claimant has however examined WW-3 Shri Virender Singh Clerk Office of the Labour Officer, who stated that Shri S.C. Aggarwal had deposed in a case before the Payment of Wages Authority on 29th August, 1984 that only the names in the payment of wages register of M/s Durga & Company were written in his hand and that his signatures appeared at serial No. 6 in the document Ex. M-11 relating to the month of September, 1981. If Durga & Company were a different concern, there was no necessity for the respondent to make entries in their register.

15. *Seventhly*, no documents have been produced by the respondent to show that they entered into an agreement with M/s Durga & Company or that M/s Durga & Company was ever registered under the provisions of the Factories Act, 1948.

16. *Eighthly*, there was no occasion for the claimant to leave the job of the respondent where he was serving since 27th July, 1976 regularly at Rs. 450 per month and to join M/s Durga & Company at Rs. 350 per month because in the claim statement, the claimant stated that his wage was Rs. 450 per month, which fact was not specifically denied in the written statement.

16. Under all these circumstances, the respondent has failed to prove that the claimant was not in their employment upto 20th February, 1982. The issue is decided accordingly against the Management.

18. *Issue No. 2.*—In view of my finding on issue No. 1, the termination of the service of the respondent on 20th February, 1982 was illegal because the provisions of Section 25-F of the Industrial Disputes Act, 1947 were not complied with in as much as no notice pay or compensation was paid to the claimant at the time of termination of his service. In the ruling reported as **The Executive Engineer, Electrical Division Nagpur and another Versus Parkash Devidas Kalsait** 1983-Lab. IC 1627 and **Mohan Lal Versus The Management of M/s Bharat Electronics Ltd.** 1981-Lab. IOC. 806, it is laid down that where the provisions of Section 25-F of the Industrial Disputes Act, were not complied with, the order was invalid. Consequently, the claimant is entitled to reinstatement with full back wages. The award is passed accordingly.

Dated the 3rd October, 1985.

R.N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 773 dated 3rd October, 1985.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

R.N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.